

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

CRL.REF.No. 8 of 2007()

SC.387/2005 of ADDL. DIST. COURT (ADHOC)III, PATHANAMTHITTA
CP.35/2005 of J.M.F.C.,THIRUVALLA
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ON THE REPORT SUBMITTED BY ADDITIONAL SESSIONS JUDGE(ADHOC)-
FAST TRACK - III, PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION
ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R.BASANT, J.

Crl.Ref.No.8 of 2007

Dated this the 1st day of June 2007

O R D E R

This reference has been made by the learned Additional Sessions Judge(Adhoc), Fast Track-III, Pathanamthitta in Sessions case 387/2005 which was committed to the court of Session on the basis of the order of committal dated 22/4/2005 in C.P.No.35/2005. The allegations were interalia under Section 308 read with 149 I.P.C. The fifth accused in that case, who was also dealt with as an adult accused along with the co-accused was later found to be a juvenile on the date of commission of the offence. In these circumstances, the learned Sessions Judge found that he could not proceed with the trial in the light of the mandate under the Juvenile Justice Act. The matter has come to the learned Sessions Judge on committal. The learned Sessions Judge has made such a reference.

2. When a person, who is a juvenile, is brought before any Magistrate, he has to follow the procedure under Section 7 of the Juvenile Justice (Care and Protection of Children)

Act,2000. Unfortunately in this case, evidently on account of the fact that the fact of juvenility was not conveyed to the learned Magistrate, the learned Magistrate has proceeded as if the fifth accused was also an adult offender. The committal made is therefore evidently wrong and in violation of the mandate of Section 7 of the Juvenile Justice Act. The learned Magistrate must have acted in accordance with the provisions of Section 7 of the Juvenile Justice Act.

3. The short question to be decided is what further course has to be followed. Ideally the order of committal in so far as it relates to the fifth accused can be set aside and the learned Magistrate can be directed to follow the procedure under Section 7 of the Juvenile Justice Act. But such a procedure would involve unnecessary delay and protraction. In the interests of the fifth accused, the case deserves to be proceeded with expedition before the Juvenile Justice Board. I am satisfied that appropriate directions can be issued to the learned Sessions Judge to forward the case in so far as it relates to the fifth accused juvenile to the Juvenile Justice Board (and if the Juvenile Justice Board has not been constituted for the area to the

learned Chief Judicial Magistrate), along with all necessary records. The Juvenile Justice Board, when it gets the papers shall reckon the case as one forwarded by the Magistrate shall sent over the accused in accordance with Section 7 of the Juvenile Justice Act and shall proceed accordingly.

4. In the result, this reference is answered. Directions are issued to the learned Sessions Judge and the Juvenile Justice Board as above.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007